

No. 538, S.]

[Published May 29, 1907.

CHAPTER 141.

AN ACT to amend chapter 169 of the statutes relative to the distribution and partition of estates and adding thereto a new section to be numbered 3940a.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. There is added to the statutes a new section to read:

* * * * *

Approved May 28, 1907.

(In effect July 1, 1907.)



No. 292, S.]

[Published May 29, 1907.

CHAPTER 142.

AN ACT to create section 905m, statutes of 1898, relating to the improvement of alleys.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. There is added to the statutes a new section to read:

* * * * *

SECTION 2. This act shall take effect and be in force from and after its passage and publication.

Approved May 28, 1907.

settlement of the estate and for his services one dollar *and fifty cents* per day, and commissions upon the amount of personal estate collected and accounted for by him and the proceeds of real estate sold under an order of the county court for the payment of debts or legacies as follows: For the first thousand dollars at the rate of five per cent.; for all above that sum * * * at the rate of one per cent.; and such further sums in cases of unusual difficulty or extraordinary services as the county court shall judge reasonable. The same *provision for compensation* shall * * * *apply to administrators.*

(Ch. 660, 1907.)

[SECTION 3930a created from section 3030a by Sec. 2, Ch. 660, 1907.]

Estates: judgment assigning residue. SECTION 3940. 1. After the payment of the debts, funeral charges and expenses of administration and after deducting all the allowances provided for in this chapter or when sufficient effects shall be reserved in the hands of the executor or administrator for the above purposes, the county court shall, by * * * a judgment assign the residue of the estate, if any, to such * * * persons as * * * by law *are* entitled to the same.

Rights of parties. 2. *Such judgment may be made on the application of the executor or administrator or of any person interested in the estate.* * * * The court shall name therein the persons and * * * assign to each * * * the portion to which he is entitled. * * * The right to recover any such portion from the executor or administrator or from any other person is hereby given to the person entitled thereto. * *

Judgment as evidence. 3. *Any finding or determination as to heirship or assignment of real estate in any such judgment shall be presumptive evidence of any fact so found and of the right to the portion of any estate so assigned and shall be conclusive evidence thereof as to all persons appearing in any such proceeding and as to all persons claiming under them.*

To apply to realty. 4. *This section shall apply to all real estate described in any such judgment whether or not in the possession of the executor or administrator.*

(Ch. 635, 1907.)

Partitions: satisfaction of creditors of non-resident heirs and legatees; service of citation. SECTION 3940a.

Whenever any legacy or distributive share of any estate being administered in the courts of this state shall be contingently, or thereafter to become due or payable to any debtor who has absconded from or is a non-resident of this state, any creditor of such debtor, may by proper petition, intervene in said proceedings to compel the application of said legacy or distributive share or so much thereof as is necessary, in payment of his debt and whenever it shall be necessary a citation to such debtor to appear at a time certain may be served by publication upon obtaining an order therefor. The application for the order of publication shall be based upon such petition duly verified and filed, stating cause for requiring the appearance of such debtor, naming him, in said court, and an affidavit showing the facts required to exist and alleging that personal service of a citation within this state cannot be made and stating the postoffice address of such debtor or that the affiant is unable after due diligence to ascertain it. The order shall direct that service of the citation be made by publication thereof in a newspaper to be designated as most likely to give notice to the person to be served for such length of time as shall be deemed reasonable not less than once a week for six weeks, and that on or before the day of the first publication there be deposited in a specified postoffice a copy of the citation together with a copy of the petition upon which such order of publication was made, securely enclosed in an envelope, the postage duly paid, addressed to such debtor, at his postoffice to be therein named, or that such deposit may be omitted because the postoffice address of such debtor cannot be ascertained. After the making of such an order personal service of such citation and petition without the state shall have the same effect as completed publication and mailing. Upon due proof of compliance with said order and at the time fixed in said citation said court shall proceed to consider such petition and take such proof, or grant such relief thereunder as shall be just and any order, judgment or determination made by said court in said proceedings shall be binding upon said debtor and shall be prima facie evidence in all courts in this state of all facts therein recited. If said creditor shall not be a judgment creditor and any issue or issues shall arise in said proceedings relating to said debt, the court shall have power to stay such proceedings pending the final determination of said issues in said court or any other court having competent jurisdiction thereof. The court may at any time require the petitioner to give a

bond in such sum and with such sureties for costs and damages of said proceedings as it may deem proper.

(Ch. 141, 1907.)

Partition of estate residue to be prior to, and part of, final judgment. SECTION 3942. 1. When the county court shall make an order or judgment assigning the residue of any estate to two or more persons entitled to the same, it shall not be necessary to make partition or distribution of such estate, unless the parties to whom the assignment shall be made, or some of them, shall request it; but when requested by any party in interest, *prior to the making and entry of a final judgment or decree in said estate*, partition and distribution may be made by three disinterested persons to be appointed by the county court for that purpose. Said court shall issue a warrant to them for the purpose of such partition and distribution and they shall be sworn to a faithful discharge of their duties.

2. *Such partition and distribution, when made and completed as hereinafter provided, may be incorporated in and made a part of the final judgment or decree to be entered in said estate, if the court shall so direct.*

(Ch. 340, 1907.)

Guardian's reports annual and other; periods for filing. SECTION 3971. Every general guardian shall * * * render *and file* an account under oath and specify therein the amount of property received by him and remaining in his hands or invested by him, and the nature and manner of such investment, and his receipts and expenditures during the year, *ending the thirty-first day of December in each year, which said annual account shall be rendered and filed within sixty days thereafter; and, whenever ordered by the court, such guardian shall, within thirty days, render and file a like account for any shorter term;* and, when any guardian of a minor shall have the custody of his ward and the care of his education, and in all cases when required by the court, he shall state in his annual report the length of time each of his wards has attended a public school during the year *or part of a year* for which the account is rendered, and shall also report which, if either, of the sureties upon his bonds as such guardian has died or removed from the county. * * * Every guardian who fails * * * *so to render and file* an account of his guardianship, * * * may be removed and another appointed in his place. * * *

(Ch. 660, 1907.)